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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 14 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a mechanical engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. Counsel also resubmits all of the previous submissions that were already part of the record of proceeding. For the reasons discussed below, we uphold the director's conclusion that the petitioner has not established the beneficiary's eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds [redacted]
The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved fuel efficiency, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Initially, the petitioner submitted materials about the importance of the petitioner's area of work. On appeal, [redacted]he petitioner's Manager of Engine and Emissions Research Section, attests that the beneficiary's skills are "key" to important projects. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, we generally

do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner submitted eight articles about the importance of the beneficiary's area of research. Some of these articles are about the omnivorous engine the petitioner is developing. The record does not establish that the beneficiary is working on this project. Other articles are about the importance of improved fuel efficiency and oil alternatives in general. We have already acknowledged above that the beneficiary works in an area of substantial intrinsic merit. One article discusses the petitioner's use of X-rays to understand fuel mixing and combustion dynamics in a fuel injection system. The article identifies Jim Wang as the principal investigator for this project. The article concludes that while the X-ray technique "could have a major impact on nozzle design," it is still in its early stages and the results might not mimic an actual engine.

The petitioner also submitted three "sample" articles by the beneficiary and four articles that cite the beneficiary's work. In response to the director's request for additional evidence, the petitioner submitted an additional five articles that cite the beneficiary's work as one of multiple background studies. It does not appear from any of the citations that the authors are applying the beneficiary's models or otherwise utilizing his work in their own research, although we acknowledge that one article cites the beneficiary's work as one of seven articles containing very interesting results. The petitioner also submitted the beneficiary's more recent publications and presentations that postdate the filing of the petition. As the petitioner must establish the beneficiary's eligibility as of the date of filing, we cannot consider this evidence. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) should not expect numerous citations because the beneficiary works in an area that is "incredibly complex and [of a] sophisticated nature" and because the work is "often highly proprietary and confidential." The petitioner submits the beneficiary's 2006 proprietary report. Counsel does not explain why the complexity of the beneficiary's area of research would limit its citation potential. While the beneficiary has worked on proprietary projects, he has also published some of his work. While the low level of

citation and the minimal nature of the citations themselves do not preclude eligibility, the citations do not, by themselves, establish the beneficiary's influence in the field.

[redacted], a [redacted] and one of the beneficiary's coauthors, asserts that he asked the beneficiary to chair a session that [redacted] organized for the [redacted] indicates that the beneficiary now organizes that session. In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted] advising that the beneficiary had served as a reviewer for SAE conferences and organized or chaired technical sessions for SAE events beginning in 2006. The petitioner also submitted a [redacted] letter from [redacted] (ASME) and a staff mechanical engineer with the petitioner, acknowledging that the beneficiary served as a technical reviewer for ASME conference proceedings. In addition, [redacted] for the *Journal of Automobile Engineering,* confirms that the beneficiary reviewed manuscripts for the journal. The attached list of completed reviews lists two reviews, one of which postdates the filing of the petition and, thus, cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Finally, [redacted], confirms that the beneficiary reviewed a manuscript for that journal in July 2008.

On appeal, counsel asserts that the director erred in discounting the significance of the beneficiary's service as a session chair/organizer and reviewer because "only those researchers having high qualifications are requested to participate in such activities." More specifically, counsel states: "Individuals selected must have significant research accomplishments, publication of influential research, scientific innovations in the field, and overall standing and acclaim in the field in order to be selected." The unsupported assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

We cannot ignore that the beneficiary's own professor requested that the beneficiary serve as session chair and that one of the petitioner's employees requested that the beneficiary perform as a technical reviewer. Thus, his selection for these positions is not indicative of any recognition beyond his immediate circle of colleagues. Moreover, the petitioner has not submitted any evidence to support counsel's assertions regarding the requirements to serve as a session chair, organizer or manuscript reviewer. Specifically, the record lacks evidence that SAE, ASME, the *Journal of Automobile Engineering* or *Fuel* utilizes a small, elite group of session chairs or reviewers. Significantly, the record lacks evidence regarding the number of SAE sessions at their events. With respect to review services, we cannot ignore that peer-reviewed proceedings and journals require numerous scientists and/or engineers to review the submitted manuscripts and abstracts. The record simply does not support counsel's assertions that these duties are indicative of the beneficiary's influence in the field.

The remaining evidence consists of letters from individuals currently or formerly affiliated with the [redacted] where the beneficiary obtained a Master of Science degree, the University

of [redacted]r the petitioner. [redacted]n associate [redacted] at the [redacted]ing the beneficiary's studies at that institution, primarily addresses the beneficiary's current research projects rather than his past work at the University of Helwan. [redacted] concludes that the beneficiary "is a rare scientist who possesses multidisciplinary knowledge, which is necessary for the [sic] engine research." [redacted]otes that the beneficiary has two Master of Science degrees in engineering and a Ph.D. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. at 221. Moreover, academic performance cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* at 219, n.6.

[redacted] explains that he worked closely with the beneficiary while the beneficiary was pursuing his Ph.D. at that institution. Specifically, during that time [redacted] was the beneficiary's advisor and the [redacted] where the beneficiary was performing his research. According to [redacted], during this time the beneficiary "developed an optical diagnostic system for detailed investigation of a diesel fuel injection systems [sic]." [redacted] further explains that the beneficiary "played a crucial role in setting up a very-high speed Laser imaging system" in [redacted]aboratory. [redacted] concludes: "Utilizing this highly advanced Laser imaging technology, [the beneficiary] initiated research and development projects on advanced fuel injections systems and achieved numerous world-class results, as reflected by our publications and conference presentations." The mere dissemination of the beneficiary's work through publications and presentations does not demonstrate the influence of that work. [redacted] does not provide examples of independent laboratories utilizing the beneficiary's diagnostic system or otherwise applying the beneficiary's doctoral research.

[redacted] praises the beneficiary's academic accomplishments, including his grade point average. As stated above, however, academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Id.* at 219, n.6. [redacted] reiterates [redacted] assertion that the beneficiary achieved "world-class" results and states that the beneficiary "successfully implemented an Engine Simulation Code to help analyze his spray characterization findings." [redacted] asserts that the "concept of integration between different aspects of research continues to gain ground today because it provides correlations between fuel injector characteristics and engine emissions." [redacted] does not, however, provide any examples of independent research laboratories using the beneficiary's Engine Simulation Code and the citations in the record do not reflect any usage of that code beyond the beneficiary's collaborators.

[redacted] asserts that the beneficiary began working for the petitioner in 2003 at its [redacted]. [redacted] asserts that the petitioner has "had difficulty in identifying and hiring individuals with similar

experience and qualifications." As noted by the director, however, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[redacted] explains that the beneficiary's section of the CTR is pursuing the development of advanced technologies to improve fuel economy and other performance parameters of reciprocating engines while reducing emissions. [redacted] notes that this section received a research and development award in 1999, before the beneficiary worked there, and other awards on unspecified dates. [redacted] also notes that the section has produced five patented technologies. [redacted] does not indicate that the beneficiary is a listed inventor on any of these patents.

[redacted] also discusses the beneficiary's work more specifically. [redacted] states that the beneficiary "evaluated and implemented an advanced injection system for the [redacted]" [redacted] further explains that the beneficiary also initiated a locomotive Common Rail fuel injection spray visualization program to demonstrate the spray behavior from the large injectors on the two-stroke locomotive engines being built by EMD. One of the beneficiary's collaborators on this project, [redacted] discusses this work in more detail. We will address his letter below.

[redacted] then discusses the beneficiary's work using X-rays from the petitioner's [redacted] to penetrate and understand the structure and dynamics of fuel sprays in fuel injectors. [redacted] speculates that this work "will help manufacturers build cleaner, more efficient diesel engines." At issue, however, is whether the beneficiary already has a track record of success with some degree of influence on the field as a whole. In a second letter, [redacted] notes the sophistication of the petitioner's laser and discusses some of the findings resulting from this laser. [redacted] does not, however, explicitly state that the beneficiary is responsible for all of those findings.

Next, [redacted] explains that the beneficiary's X-ray work has produced "invaluable information." [redacted] asserts that the beneficiary's findings "are being used by the Computation Fluid Dynamic community to design and develop new simulation models." [redacted] concludes that the goal of this work is to develop technology for efficient engines. [redacted] does not provide a single example of an independent laboratory using the beneficiary's X-ray findings to develop new simulation models and the record does not contain letters from independent computation fluid dynamic engineers who are doing so. The citations in the record are also not from engineers using the beneficiary's findings to develop new simulation models.

Finally, in his second letter, [redacted] asserts that the beneficiary "is the lead investigator for developing the technology to replace diesel fuel with Bio-Di-Methyl-Ether, an environmentally friendly fuel." While [redacted] discusses the benefits of these fuels, he does not explain how the beneficiary's work on this project has already influenced the field as a whole.

[redacted] asserts that the petitioner's photon source was "physically the same" as one previously used by [redacted] and that the beneficiary conducted his X-ray project in collaboration with SNL to study spray patterns using conventional laser optical techniques. [redacted] does not explain how this collaboration has influenced the field. [redacted] also discusses the beneficiary's collaboration with [redacted] to evaluate "a completely different injection system." While [redacted] explains that this project required "considerable experimental set up abilities" and confirms that the beneficiary successfully completed the project, [redacted] does not explain how this project has influenced the field. In a second letter, [redacted] explains that this work resulted in a conference paper and "potentially a journal article." The mere dissemination of the beneficiary's research is insufficient absent evidence of its ultimate influence in the field.

[redacted] for the [redacted], which funds the beneficiary's work for the petitioner, asserts that he has known the beneficiary since the beneficiary began working for the petitioner. [redacted] asserts that the beneficiary has been a "key researcher" in the petitioner's Vehicle Technology program. [redacted] explains that the petitioner's "team," for the first time, "used X-rays to penetrate through gasoline and diesel sprays and made detailed measurements for fuel spray." [redacted] further explains that this work "uncovered a previously unknown shockwave in diesel sprays, which may eventually help manufacturers improve the combustion process and thus build cleaner, more efficient injection systems." [redacted] does not discuss what impact this work has already had in the field. [redacted] notes that the Department of Energy funds the beneficiary's work. Any research, in order to be accepted for funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. [redacted] then asserts that the [redacted] and General Motors have all become interested in the beneficiary's work. The petitioner collaborated with Caterpillar and a former subsidiary of General Motors, EMD. [redacted] does not explain the significance of the beneficiary's work on projects that are of interest to his clients and collaborators. The record does not contain a letter from officials at the [redacted] explaining how they became aware of the beneficiary's work and how they are applying that work.

As stated above, the record contains a letter from one of the beneficiary's collaborators on the projects for EMD, [redacted] explains the goals of the project and praises the beneficiary's technical knowledge, capability and professionalism. [redacted] notes that the beneficiary prepared a technical report on diesel spray characteristics using laser imaging. [redacted] asserts that this report "surpassed the expectations of [the beneficiary's] supervisor and EMD" and "is still considered the 'gold standard'" within the petitioner's Engine and Emission group. The record fails to establish how the report has advanced the petitioner's work on other projects. While [redacted] also discusses the beneficiary's work on the EMD common rail injection system project, it appears that this project is still in a preliminary stage and the record does not establish how this project has already influenced the field.

On appeal, the petitioner submits a letter from [redacted] at EMD. [redacted] reiterates the claim that the beneficiary's report is still considered the "gold standard" by the petitioner's Engine and Emission Group. [redacted] does not explain how EMD has implemented the beneficiary's work, if indeed it has. While [redacted] asserts that the beneficiary has a "unique set of skills and experience which could not be found in other researchers," a shortage of workers with the beneficiary's skills and experience cannot serve as the basis for a wavier of the alien employment certification process.

As stated above, it cannot suffice to state that the beneficiary possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221. Furthermore, with regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

The most independent letter is from [redacted] a [redacted] with the [redacted] we note that [redacted] previously taught at the [redacted] and coauthored work with [redacted] although we acknowledge that [redacted] ime at that institution did not overlap with the beneficiary's time there. [redacted] notes that the beneficiary is conducting his research using "one of the most brilliant x-ray in the world." Qualification to work for the petitioner and use its advanced equipment is insufficient grounds for a waiver of the alien employment certification process. [redacted] peculates as follows:

> For the first time, it may be possible to understand the structure and dynamics of fuel spray in the near-nozzle region of an injector. The technique that [the beneficiary] is using could have a major impact on Diesel injector design, fuel injection parameters, and spray modeling.

[redacted] does not claim to have applied the beneficiary's models or otherwise utilized the beneficiary's work. [redacted] also fails to identify specific examples of the beneficiary's influence in the field beyond his immediate circle of collaborators.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158. 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of talent without providing specific examples of how the beneficiary's innovations have influenced the field. Merely repeating the legal standard for a benefit does not satisfy the petitioner's burden of proof.[1] The petitioner submitted only a single independent letter and this letter does not suggest the author has applied the beneficiary's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

According to the Department of Labor's Occupational Outlook Handbook (OOH), mechanical engineers research, design, develop, manufacture, and test tools, engines, machines, and other mechanical devices. *See* http://www.bls.gov/oco/ocos027.htm (accessed January 6, 2011 and incorporated into the record of proceeding). Thus, the fact that the beneficiary has worked on original projects does not set him apart from engineers with the same minimum qualifications for the job. As stated above, even where the beneficiary is responsible for an innovation as might be demonstrated by a patent, whether the specific innovation serves the national interest must be decided on a case-by-case basis. *NYSDOT*, 22 I&N Dec. at 221, n. 7.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*. 745 F. Supp. 9, 15 (D.C. Dist. 1990).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.